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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,147	02/27/2004	Joseph L. Hellerstein	YOR920030548US1 (590.126)	9276
35195 7590 10/10/2007 FERENCE & ASSOCIATES LLC 409 BROAD STREET PITTSBURGH, PA 15143			EXAMINER ZHE, MENG YAO	
			ART UNIT 2195	PAPER NUMBER
			MAIL DATE 10/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/789,147

Applicant(s)

HELLERSTEIN ET AL.

Examiner

MengYao Zhe

Art Unit

2195

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/27/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/27/2006, 2/27/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-16 are presented for examination.

Information Disclosure Statement

2. The information disclosure statement filed 12/27/2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.
3. More specifically, reference item f and reference item titled "Part 2: Software Administration" have been crossed out because these documents have not been provided by the applicant. Therefore, these two references have not been considered.

Specification

4. The disclosure is objected to because of the following informalities:
 - i) The attorney docket numbers for the U.S. Patent Applications incorporated by reference should be deleted in page 6, lines 12-13 and lines 14-15. The U.S. Patent Applications that are incorporated by reference should, instead, be identified by their corresponding application numbers. See 37 CFR §1.57(b)(2). Appropriate correction is required.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention are directed to system claim, but appearing to be comprised of software alone without claiming associated computer hardware required for execution (i.e. a claim 1 recited resource manager is a software comprising a plurality of means, wherein the plurality of means also a software entities. Thus it is a software program/application that comprising software modules to performed a certain functions). The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101.

http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The following claim languages are unclear and indefinite:

i) Claim 1, line 1, it is unclear as to what is embodied in “a system” and “a change plan” <i.e. what is included in the system? Is it a computer system? A database system? Also, what is this a plan of? Changing CPU usage? Installing new hardware?>.

It is unclear what the relationship is among “tasks” of line 3, “a system”, and “a change plan” of line 1 <i.e. are tasks part of steps to be taken for the plan change? Or are these tasks already running in the system before change of plan was requested? Is the plan trying to change the order of these already executing tasks?>.

Line 5, it is unclear how “creating a change plan” is specifically performed <i.e. does it execute the tasks according to how they are ordered in the task graph?>.

Claims 10 and 19 have the same deficiencies as claim 1 above.

ii) Claim 2, it is not understood as to what the relationship is between “packages” and “a change plan” in line 1 of claim 1 <i.e. is the plan trying to install more packages on the system?>.

Claims 3, 11, 12 have the same deficiencies as claim 2 above.

iii) Claim 4, it is uncertain what is meant by “lifecycle transitions” and “artifacts” <i.e. What do these two terms mean? Are the artifacts part of the system in claim 1? What are they? Processors?>.

Claims 5, 13, and 14 have the same deficiencies as claim 4 above.

iv) Claim 6, it is not clearly understood as to what is meant by "the impact" <i.e. what is it specifically? Is it analyzing the amount of delay in executing tasks when a change of plan is made?>. Furthermore, it is unclear how "a service" is related to "tasks" in claim 1 <i.e. are the tasks performing the service? Is service provided by the system?>.

Claims 7, 8, 9, 15, 16, 17, and 18 have the same deficiencies as claim 6 above.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 10, and 19, are rejected under 35 U.S.C. 102(b) as being anticipated by Wolfinger et al., Patent No. 6,415,259 (hereafter Wolfinger).

10. As per claims 1, 10, and 19, Wolfinger teaches the invention as claimed including a system for automatic construction of a change plan (Abstract, lines 7-10; Column 1, lines 41-54), said system comprising:

an arrangement for submitting a request for change to the system (Fig 5, unit 100 "send request to plan" to unit 110; Column 12, lines 1-4);

an arrangement for constructing a task graph specifying the order in which tasks execute in compliance with data and temporal dependency constraints (Fig 1; Column 4, line 65-Column 5, line 6; Column 6, lines 63-64; Column 7, lines 18-27, lines 29-34; Column 14, lines 3-4);

an arrangement for creating a change plan from the task graph (Column 11, lines 55-65).

11. Claims 1-3, 10-12, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor, Patent No. 5,721,824 (hereafter Taylor).

12. As per claims 1, 10, and 19, Taylor teaches the invention as claimed including a system for automatic construction of a change plan (Column 2, lines 1-3), said system comprising:

an arrangement for submitting a request for change to the system (Column 4, lines 23-32);

an arrangement for constructing a task graph specifying the order in which tasks execute in compliance with data and temporal dependency constraints (Column 2, lines 15-27, 41-44; Column 5, lines 25-41);

Art Unit: 2195

an arrangement for creating a change plan from the task graph (Column 2, lines 20-22).

13. As per claims 2 and 11, Taylor teaches an arrangement for storing information about packages which may be installed on the system (Column 5, lines 25-30).

14. As per claims 3 and 12, Taylor teaches an arrangement for storing information about current configuration of the system, including packages installed on the system (Column 4, lines 60-65; Column 5, lines 3-11).

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 4-9, 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor, Patent No. 5,721,824 (hereafter Taylor) in view of Wolfinger et al., Patent No. 6,415,259 (hereafter Wolfinger).

17. As per claims 4 and 13, Taylor does not teach an arrangement for determining lifecycle transitions that are imposed on artifacts of the system by execution of the tasks.

However, Wolfinger teaches an arrangement for determining lifecycle transitions that are imposed on artifacts of the system by execution of the tasks (Column 11, lines 59-60) for the purpose of constructing a workflow plan.

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to combine the teachings of Taylor with, an arrangement for determining lifecycle transitions that are imposed on artifacts of the system by execution of the tasks, as taught by Wolfinger, because it allows for the construction of a workflow plan.

18. As per claims 5 and 14, Wolfinger teaches wherein the arrangement for creating a change plan includes an arrangement for determining lifecycle transitions that are imposed on artifacts of the system by execution of the tasks (Column 11, lines 59-60).

19. As per claims 6 and 15, Wolfinger teaches an arrangement for analyzing the change plan, whereby the impact of upon a service by a change plan may be determined (Column 12, lines 31-40).

20. As per claims 7 and 16, Wolfinger teaches an arrangement which specifies artifacts and other services being used by the service being analyzed (Column 7, lines 1-5).

21. As per claims 8 and 17, Wolfinger teaches an arrangement which specifies the impact on service level agreements as a result of executing the change plan (Column 1, lines 23-29; Column 7, lines 9-10; Column 12, lines 31-40).

22. As per claims 9 and 18, Wolfinger teaches an arrangement which specifies the impact on installation policies as a result of executing the change plan (Column 2, lines 40-44).


Conclusion

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MengYao Zhe whose telephone number is 571-272-6946. The examiner can normally be reached on Monday Through Friday, 7:30 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2195

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


MENG-AL T. AN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100